

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF E.ON AG, )  
POWERGEN PLC, LG&E ENERGY )  
CORP., LOUISVILLE GAS & ELECTRIC )  
COMPANY, AND KENTUCKY UTILITIES )  
COMPANY FOR APPROVAL OF AN )  
ACQUISITION )

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COMMISSION  
CASE NO. 2001-104

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**POST-HEARING BRIEF ON BEHALF OF  
KENTUCKY ASSOCIATION FOR COMMUNITY ACTION, INC. AND  
COMMUNITY ACTION COUNCIL FOR LEXINGTON-FAYETTE,  
BOURBON, HARRISON AND NICHOLAS COUNTIES, INC.**

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Come the interveners, Kentucky Association for Community Action, Inc. ("KACA") and Community Action Council for Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. ("CAC"), by counsel, and hereby tender the following post-hearing brief.

KACA and CAC, as non-profit corporate representatives of low income customers in the service territories of LG&E and KU ("Applicants"), remain deeply concerned about the impact of the proposed acquisition on customers. If the acquisition is approved, the Applicants must be held responsible for both access to and quality of service in a meaningful and substantive way.

Despite numerous questions and answers during the discovery and hearing process, the Companies were unable to quantify and unwilling to commit to any tangible public benefit as a result of this acquisition (See transcript of evidence, July 5-6, 2001, hereinafter "TE," Erhard Schipporeit, pp. 123-125). Nevertheless, Kentucky customers will be yet another step removed, in management hierarchy, from the top management and decision makers of what will be an

extremely large, international utility company. This will be the third such merger for LG&E and KU customers.

Customers possibly stand to lose as the acquisition process likely demands greater "efficiencies" internal to the Applicants, who are under a duty to return the greatest profit possible to shareholders. It is likely that the top company managers will neither know nor understand customer needs in Kentucky, which could lead to operational decisions that have a negative impact on customers and especially low income customers.

One such example may be found in the proposed "virtual customer service centers," discussed in detail at the hearing. As described, these centers may offer improvement of customer service for some by providing dial-up customer service options and more tools in the hands of call center operators when they are speaking with customers. However, this proposal will not benefit all customers such as low income customers with no telephone service, those with limited English speaking ability, and the elderly who may not be comfortable with an automated telephone system. Any decrease in access to service personnel in local offices (such as consolidation of offices, decrease in staffing, decrease in operating hours etc.) or access to service personnel by phone (as opposed to automated system) that is implemented as "virtual service center" capability improves will have a disproportionate impact on those low income, limited English-speaking, and elderly customers.

It was conceded at the hearing that low income customers require a greater level of service than other residential customers. (Burch, pp. 4-5, June 26 Testimony; TE, Steffieri, pp. 268-269). Below-poverty level households make up 10-20% of customers in most Kentucky communities. This does not include the many working poor households that are just at or above

poverty level and experience similar situations and need as those below poverty. This large portion of the customer base requires a high level of services from their utility companies because they tend to:

- ▶ Move frequently, requiring assistance with connection.
- ▶ Live in poorly insulated homes with inefficient appliances and can benefit from energy efficiency audits and weatherization services.
- ▶ Need help in understanding their bill or correspondence from the utility company because they are elderly, disabled, functionally illiterate, or non-English speaking.
- ▶ Need access to service representatives that can help them understand payment options and find out about energy assistance programs and services in their community.

“Prepayment Utility Meters, Affordable Home Energy, and the Low Income Consumer,” Roger D. Colton, *Journal of Affordable Housing & Community Development Law*, Volume 10, Number 3, Spring 2001, at 285 (attached to the written, prefiled testimony of Jack Burch, filed June 26, 2001).

Low income, working poor, elderly, and disabled customers will be disproportionately and negatively affected by any changes to service that are implemented by management subsequent to the acquisition which result in less personal service to the customer. These include shifts to automated systems, shifts to personnel with less familiarity with the specific people and communities they serve, “virtual call centers,” and “prepaid meters.” As these customers are generally on a month-to-month, day to day survival basis in terms of their household income and budget, such changes in service may result in disconnection or loss of service.

The work of the Applicants' Value Delivery Teams (VDT) was presented during the discovery period and discussed at the hearing. The implementation of the VDT plans will continue with the proposed acquisition. The Companies have offered to continue to provide high quality services to customers and have stated that they will seek best practices in all areas of operation (TE, Erhard Schipporeit, p. 125). However, no specific solutions targeted to the large low income, working poor and elderly portion of the customer segment were suggested by the Applicants during the hearing. As a condition of the acquisition, if approved, the Applicants should be required to develop a customer service plan for not only the customer base as a whole, but also specifically low income, working poor and elderly customers who have specific needs. This plan should be available for review by the Public Service Commission, low income advocates and the public.

As a further condition of the acquisition, if approved, tangible benchmarks for customer service should be established as well as an independent third party evaluation. This would include annual customer service evaluations to insure high quality service for all customers, which should be available for review by low income advocates and the public. In his testimony, Jack Burch suggested specific components to be included in such an evaluation and they will not be repeated here. However, it is imperative that the evaluation be completed by an independent, third party firm that has familiarity with all customer segments, including low income, working poor, and elderly customers. Results should be broken down, **at a minimum, by income, race, and age** to insure that ALL customers are receiving quality service.

It was discovered during this case that E.ON AG, as the proposed parent company and point of final decision making for LG&E and KU, has **no experience** in developing and delivering

services that specifically address the needs of the low income customer segment. In Germany, affordability of electric services is the responsibility of the government, and therefore E.ON AG operates no specific programs or services for low income customers (See Applicant responses to CAC and KACA Q-2 filed June 19, 2001 and MHNA Q-25 filed June 4, 2001). However, in the United States and in Kentucky, there is ample precedence for utility companies to initiate programs to serve the specific needs of this large segment of their customer base. Recent legislation in Kentucky (House Bill 305, 2001 General Assembly ), suggests the establishment of universal service programs by defining the role that utility companies and the Public Service Commission are authorized to play in serving low income customers. This new law clearly enables utility companies to establish universal service programs and the Public Service Commission to approve such programs.

Mr. Victor Staffieri stated at the hearing that universal service programs for low income customers are being discussed for the LG&E service territory and would be subsequently considered for the KU service territory (TE. Staffieri, pp. 270-271). However, given that 1) the track record of Kentucky Utilities is poor in developing and in supporting assistance programs (support for WinterCare, for example, has been negligible in recent years), and 2) the proposed new parent company, E.ON AG, has no experience with assistance programs, **KACA and CAC strongly submit that development of a significant new program, pursuant to HR 305, to equally assist low income customers throughout the LG&E and KU territories, should be required as a condition of the acquisition.** This requirement will be a tangible public benefit that will result in more appropriate service and less frequent loss of service for a significant portion of the customer base, and would offer the Commission a reason to approve this

acquisition. In order to insure the success of such programs, they should be developed in collaboration with the organizations that have experience in providing energy assistance programs in the local communities served by these companies.

Finally, electricity is an essential household commodity for everyone including customers with limited ability to pay. Customer service and uninterrupted service should not be compromised for efficiencies or cost savings that may be sought subsequent to a merger or acquisition. "The availability of public utility service has been judicially recognized as essential not only to modern convenience, but to modern health and welfare as well. The U.S. Supreme Court noted in *Craft v. Memphis Gas, Light, and Water Division* that 'utility service is a necessity of modern life; indeed, the discontinuance of water or heating for even short periods of time may threaten health or safety.' " ("Prepayment Utility Meters, Affordable Home Energy and the Low Income Utility Consumer." *Journal of Affordable Housing and Community Development Law*, Vol. 10, No. 3, Spring 2001).

If the proposed acquisition is approved, clearly all commitments of the previous merger cases should be honored. However, as there will be tangible benefits to the parties to the proposed acquisition when it occurs, tangible benefit to the public and customers should likewise be required. As we submit LG&E and KU to even more remote ownership and top management, the risk of deteriorating customer service should be balanced by a requirement to specifically address the service needs of the most needy and vulnerable customers and to objectively evaluate services rendered to all customers.

In summary, in this acquisition case:

- ▶ the Applicants have proposed no tangible benefits to Kentucky ratepayers;

- ▶ there is risk that if approved as proposed, customer service may deteriorate for some or all ratepayers as further efficiencies are sought;
- ▶ as proposed, the needs of low income, working poor and elderly customers, a significant portion of the customer base, have not been adequately addressed, which may result in loss of service and consequent risks to health and safety.

Therefore, KACA and CAC recommend that the following conditions be imposed on approval of the proposed acquisition:

1. The previous merger commitments be required;
2. A comprehensive benchmark and monitoring system for all aspects of customer service should be developed. This should include an independent, third party evaluation by a qualified individual or firm familiar with consumer and low income population needs. The evaluation should report results by demographic groups including, at a minimum, income, age, and race. See detailed recommendations in Jack Burch's June 26 prefiled written testimony. Further, annual results of the evaluation process should be delivered to interested parties, such as low income advocates, and should be made available to the public for comment
3. The Applicants should be required to demonstrate their commitment to customers and the communities served by LG&E and KU by establishing a universal service energy assistance program serving the entire combined territory of the two companies. A universal service energy assistance program will insure that customers with limited ability to pay have uninterrupted access to utility service. This program should be developed collaboratively with the agencies and organizations that have experience in delivering such

programs and familiarity with community needs and resources in the various regions of the companies' service territories.



JOE F. CHILDERS  
201 W. Short Street  
Suite 310  
Lexington, KY. 40507  
(606) 253-9824

**ATTORNEY FOR KENTUCKY  
ASSOCIATION FOR COMMUNITY  
ACTION, INC. AND COMMUNITY  
ACTION COUNCIL FOR LEXINGTON-  
FAYETTE, BOURBON, HARRISON  
AND NICHOLAS COUNTIES, INC.**

#### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing document has been served on the following persons on this the 26<sup>th</sup> day of June, 2001:

*197- July*  
Kendrick Riggs, Esq.  
Ogden, Newell & Welch  
1700 Citizens Plaza  
500 W. Jefferson Street  
Louisville, KY 40202

John R. McCall, Esq.  
Executive VP, General Counsel  
Louisville Gas & Electric Co.  
220 W. Main Street  
Louisville, KY 40202

Patrick D. Pace, Esq.  
Kamuf, Yewell & Pace  
221 W. Second Street  
Owensboro, KY 42303

Stanley K. Conn  
Owensboro Municipal Utilities  
2070 Tamarack Road



P.O. Box 806  
Owensboro, KY 42301

David F. Boehm, Esq.  
Michael L. Kurtz, Esq.  
Boehm, Kurtz & Lowry  
36 E. Seventh St., Suite 2110  
Cincinnati, OH 45202

Carol Raskin, Esq.  
Attorney, MHNA  
Legal Aid Society, Inc.  
425 West Muhammad Ali Boulevard  
Louisville, KY 40202

Dennis G. Howard, Esq.  
Monica M. McFarlin, Esq.  
Assistant Attorneys General  
1024 Capital Center Dr., Suite 200  
Frankfort, KY 40601

James M. Miller, Esq.  
Sullivan, Mountjoy, Stainback  
& Miller  
P.O. Box 727  
Owensboro, KY 42302

Douglas L. Beresford, Esq.  
Hogan & Hartson LLP  
555 13<sup>th</sup> Street, N.W.  
Washington, DC 20004

Robert L. Madison  
5407 Baywood Drive  
Louisville, KY 40241

Don Meade, Esq.  
Priddy, Isenberg, Miller & Meade  
800 Republic Building  
Louisville, KY 40202

Edward W. Gardner, Esq.  
LFUCG-Dept. Of Law  
200 East Main Street  
Lexington, KY 40507

Frank N. King, Esq.

Dorsey, King, Gray & Norment  
318 Second Street  
Henderson, KY 42420

Dean Stanley  
P.O. Box 18  
Henderson, KY 42419

Dale Henley, Esq.  
East Ky. Power Coop.  
P.O. Box 707  
Winchester, KY 40392

David C. Brown, Esq.  
Stites & Harbison  
400 W. Market Street  
Suite 1800  
Louisville, KY 40202

Jack E. Burch, Executive Director  
Community Action Council  
P.O. Box 11610  
Lexington, KY 40576

Kip Dowmar  
Executive Director  
KY Association for Community Action  
900 Wilkinson Boulevard  
Frankfort, KY 40601

Richard S. Taylor, Esq.  
Gallatin Steel Company  
225 Capital Avenue  
Frankfort, KY. 40601

John H. Conway, Esq.  
Brickfield, Burchette, Ritts & Stone,  
1025 Thomas Jefferson Street, N.W.  
8th Floor, West Tower  
Washington, DC. 20007

  
JOE F. CHILDERS